

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
450 N Street, Room 121
Sacramento, California

REPORTER'S TRANSCRIPT
SEPTEMBER 27, 2006

ITEM J
CHIEF COUNSEL MATTERS
RULEMAKING
REQUEST TO PUBLISH
BOARD OF EQUALIZATION RULES FOR TAX APPEALS

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

For the Board
of Equalization:

John Chiang
Chairman

Claude Parrish
Vice-Chair

Bill Leonard
Member

Betty T. Yee
Acting Member

Richard Chivaro
Appearing for Steve Westly,
State Controller (per
Government Code
Section 7.9)

Gary Evans, Acting
Chief, Board Proceedings
Division

Board of Equalization
Staff:

Robert Lambert
Tax Counsel
Carole Ruwart
Tax Counsel

Bradley Heller
Tax Counsel

Ian Foster
Tax Counsel

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INDEX OF SPEAKERS

Speaker	Page
TERESA CASAZZA	7
LENNY GOLDBERG	8
JOSHUA GOLKA	24
MARY HERNANDEZ	25

1 Sacramento, California

2 September 27, 2006

3 ---oOo---

4 MR. EVANS: The next item is Item J, Chief
5 Counsel Matters.

6 MR. CHIANG: Okay.

7 MR. EVANS: This is a request to publish the
8 Board of Equalization Rules for Tax Appeals, Chapters 1
9 through 5. We have four speakers that have signed up.

10 MR. CHIANG: How many?

11 MR. EVANS: Four.

12 MR. CHIANG: Four.

13 Somebody wish to -- summoning Mr. Chivaro.
14 Summoning Mr. Chivaro.

15 MR. EVANS: Mr. Lambert will make the
16 presentation.

17 MR. LAMBERT: Good afternoon. The staff is
18 requesting authorization to publish all five chapters of
19 Proposed Rules for Tax Appeals.

20 These rules are a product of a one-year long
21 process. The process has included seven interested
22 parties meetings, five Board meetings, numerous drafts
23 of Chapters 2 through 5.

24 It should be noted that consensus was reached
25 with the interested parties on all but a very few
26 issues. And all alternate and alternative language
27 proposals received from interested parties have been at
28 one time or other distributed to the Board and placed on

1 the special Board web site.

2 Among other things, these new rules have
3 compiled all Board hearing procedures into one logically
4 organized and comprehensive source for ease of taxpayer
5 use.

6 They have also made a number of improvements
7 and clarifications to the Board's procedural rules,
8 including providing for appeals conferences for all
9 types of taxes and fees administered by the Board;
10 including State assessee property taxes.

11 They've also provided for such things as the
12 coordination of innocent spouse appeals. And they have
13 also codified the Board's long-standing opinion that
14 constituents may communicate with their Board Member
15 representatives even if they have a tax dispute.

16 With me today on my right are Carole Ruwart,
17 who's worked on the property tax component of the rules;
18 Bradley Heller, who has worked on the Business Tax Rules
19 and the General Procedural Rules in Chapter 5; and Ian
20 Foster who has worked on the FIT Procedure Appeal Rules.

21 Among -- between the four of us we'll try to
22 answer any questions that you may have.

23 MR. CHIANG: Okay. Very good.

24 MR. EVANS: The first three speakers, Teresa
25 Casazza, Lenny Goldberg, Joshua Golka.

26 MR. CHIANG: Okay.

27 MR. LEONARD: Mr. Chairman.

28 MR. CHIANG: Yes.

1 MR. LEONARD: While they're coming down I just
2 want to say thank you. You guys did a great job of
3 putting this all together and -- and putting both our
4 traditions and the way we do things and then ironing out
5 some issues that we hadn't thought of, of getting that.

6 So, thank you all, that's great work.

7 MR. PARRISH: I would also like to say that --
8 to thank the many Board staff who worked extremely hard
9 on this project, and I'd especially like to thank -- I'm
10 going to mention your name and I apologize. Arlo
11 Gilbert. Bill Kimsey. Cheri Kendall. Philip Spielman.
12 Diane Olson. Ian Foster. Reed Schreiter. Bradley
13 Heller. Carole Ruwart.

14 And I -- I want to tell you that this is -- I
15 am aware of how much effort has been put behind this,
16 and it has been going on for a long time. And I think
17 you've done a wonderful thing for the people of
18 California to make it a more open, more sunlight, more
19 simple, more user friendly, and addressed the -- the
20 criticisms whether warranted or unwarranted.

21 You've attempted to address them. And on my
22 behalf, I personally thank you. And I know that our --
23 our -- our Chief Counsel appreciate -- appreciates what
24 you did. And it doesn't go without recognition as far
25 as I'm concerned.

26 Thank you very much

27 MR. CHIANG: Okay, very good. Welcome. You
28 have three minutes.

1 ---oOo---

2 TERESA CASAZZA

3 MS. CASAZZA: My name is Teresa Casazza. I'm
4 with the California Taxpayers Association. And I also
5 wanted to start off saying that we very much appreciate
6 and commend the hard work of the staff. Meeting with
7 taxpayers on many interested party meetings,
8 accumulating our input, taking questions off-line,
9 being very responsive, providing this detail of the
10 underscoring and the highlighting, all of the work that
11 they did was just truly appreciated.

12 We do support the staff's recommendation to
13 approve the publication for the Rules of Practice. We
14 believe that this was a very worthwhile and important
15 endeavor. It provides clarity and encourages a real
16 fair and efficient process.

17 We would hate for this work to be delayed or be
18 shelved and we do ask for a timely publication.

19 Thank you

20 MR. CHIANG: Thank you.

21 ---oOo---

1 LENNYGOLDBERG

2 MR. GOLDBERG: Yes, Lenny Goldberg, California
3 Tax Reform Association. We participated in the process.
4 We appreciate that there was a long and extended
5 process. However, and I would say this and I would urge
6 rejection at least of Section 5 or of -- and I'll speak
7 to the specific issues that I think you should reject.

8 The -- as we understood this process from
9 beginning, it was going to clarify the separate -- and
10 separate some of the adjudicatory roles of the Board
11 from some of its administrative roles. It was going to
12 set up a process of appeal that would help to deal
13 with -- and I -- I should say I'm one of the critics
14 here, make the process more Court-like. Make the
15 process more accessible to taxpayers and to other
16 interests with regard to an adjudicatory process.

17 And in -- in several key ways we think it's --
18 it failed. It may be that I'm only speaking about a
19 small number of provisions. Sections 1, 2 and 3, I sat
20 through some of those meetings, not of great interest.
21 I think you worked out a bunch of problems.

22 Section 4, that seems to be the case, as well,
23 with regard to the input of the Franchise Tax Board.

24 Specifically we started with what we thought
25 was a placeholder. Communications can be free and easy
26 and open at all times in an adjudicatory process. We
27 had several different proposals and several different
28 discussions with regard to ex parte communications.

1 What came back from the staff to the Board that
2 we think should be rejected in Section 50 -- 5000 5015.1
3 is no reference whatsoever to disclosure of ex parte
4 communications. FTB suggesting all party meetings. Us
5 suggesting that you have many more hearings per month so
6 that you don't have the requirement that you meet in
7 private with -- in an adjudicatory process.

8 What we are left with here is after all this
9 process absolutely no change in terms of making this
10 more Court-like in terms of the relationship between the
11 adjudicatory process, the taxpayer and the public who
12 needs to hold the process accountable.

13 Instead, we have many things happening that are
14 not on the record with regard to the lobbying and
15 briefing about -- and in private about tax matters.

16 We've spoken of this before. I think there are
17 a number of solutions to it. Some are -- you might
18 consider extreme. Some are moderate. None have been
19 accepted in -- in this publication.

20 Secondly, I think there -- an effort to improve
21 the process with regard to sales tax cases. Franchise
22 Tax cases are all on the record, you can read all the
23 briefings and all the documents. Sales tax cases are
24 not. And we've had the experience where we've been --
25 I've been personally involved with -- on behalf of
26 Northern California Independent Book Sellers and the
27 Borders and Barnes and Noble cases, for example, in
28 which no information was available to the public as

1 these issues get -- or to -- to interested parties or
2 the public, as these issues came before the Board.

3 Similarly, with LSI Logic, the documents and
4 the background information was not available. On many
5 of those cases that have implications -- significant
6 implications for revenue, we do not learn what the --
7 what the potential revenue implications are.

8 Now --

9 MR. EVANS: Time has expired.

10 MR. GOLDBERG: -- there is one --

11 MR. CHIANG: Lenny --

12 MR. GOLDBERG: I'm sorry.

13 MR. CHIANG: -- your time has expired. I'll
14 ask some questions, maybe you can flush it out with
15 them.

16 MR. GOLDBERG: Okay.

17 MR. CHIANG: Okay. Where -- the -- and then
18 let me talk to staff. Where was it -- where did you
19 sense for you the breakdown in the process?

20 MR. GOLDBERG: I -- only at the very end when
21 we saw coming before the Board issues that were -- had
22 been resolved presumably by staff. Now, if they
23 represent the thinking of the Board, I'll just be a
24 minority here.

25 But I don't think the process was a bad process
26 until -- and -- and just at this three minutes -- I mean
27 this -- this is the example. I thank you for asking me
28 the question.

1 If you're going to -- we never -- there has
2 never been in the process a broad public hearing in
3 which Members and Members of the public have discussed
4 the actual final recommendations that are before you.

5 So, what I would have expected in the process
6 was that we would have a broad public hearing. I have
7 two other issues I'd like to talk about but I only have
8 three minutes.

9 That is not a public process. Some of this
10 occurred in interested parties meetings. But the
11 decisions to publish never -- we're going to publication
12 with this without ever having a public hearing and
13 public discussion in which -- and -- and we're at -- I'm
14 sorry, I was at a loss here, I didn't realize we only
15 had three minutes to just say, "We don't like it, don't
16 publish it," or, "We like it and publish it."

17 I think there have never been a broad public
18 hearing and discussion of the alternatives in a public
19 process. What we have is what was presented by staff to
20 the Board. So, if I may, I have two other -- two other
21 issues.

22 MR. CHIANG: Okay. So -- so, did you
23 communicate your -- your disagreement with staff at an
24 earlier point in time? It was reported and I wasn't --
25 I can flush this out with Bob. But, you know, he sensed
26 that there was a general agreement to this.

27 At what point did you communicate -- excuse
28 me --

1 MR. GOLDBERG: I never had any understanding of
2 a general agreement until I saw the agenda, which is two
3 weeks ago which said, "Here's what's being published."
4 And everything that was on the web site prior to that,
5 it contained -- in -- in the ex parte piece, three
6 different alternatives. We're always there. Here's the
7 underscored. Here's the Alternative 1, Alternative 2,
8 SEIU alternative, the -- the FTB alternative.
9 Interested parties meetings in which I had expressed my
10 opinion about some of these issues and other -- other
11 alternatives not submitted in writing.

12 So, their -- but their -- only until we saw the
13 agenda did we realize the decisions had been made about
14 these in a definitive manner. Not that we are going to
15 have a hearing in front of the Board in which we can
16 discuss the different alternatives in public, but only
17 that the decisions had been made.

18 MR. CHIANG: Let me try to winnow your answer
19 so that I have a better perspective yes or no, you know,
20 on this -- and I don't know if there's a third answer,
21 okay, when they presented the alternatives in the
22 interested parties was -- were the -- all the
23 alternatives not available to you?

24 MR. GOLDBERG: No, they were all available.
25 And then we had other discussions, too, such as having a
26 number -- many more hearing hours, other things that
27 were not submitted in writing. Those were all discussed
28 at the interested parties meetings and the --

1 MR. CHIANG: And so, did you communicate that
2 you had a disagreement and is staff incorrect in
3 understanding that there was a general agreement, or did
4 you just have these discussions just generally and
5 somehow it was miscommunicated?

6 I'm just trying to get a sense of --

7 MR. GOLDBERG: I have no idea where staff
8 thinks that everybody has come to broad agreement on
9 this issue. I have no idea where that comes from. I
10 know that the Franchise Tax Board's issues have not been
11 considered. I know that -- it was stated that SEIU 1000
12 withdrew its -- its full-blown proposal, but that does
13 not mean they agreed and -- and someone is here from
14 them and can speak for them.

15 But that does not mean they agreed to the
16 original proposal that there should be no consideration
17 of -- other considerations than pure ex parte without
18 any disclosure or discussion or anything.

19 So, I -- I don't know where staff got the idea
20 that there was broad agreement on this.

21 MR. CHIANG: So, when -- when SEIU 1000
22 withdrew its proposal, was it communicated that they
23 were not in agreement, or did they just say, "We're
24 withdrawing it"? Right, I'm just trying to flush this
25 out.

26 MR. GOLDBERG: I can't speak for what -- what
27 happened -- what happened with that, but I think they
28 can speak that they never did accept that meant

1 accepting the proposal. It may have been they accepted
2 the Franchise Tax Board proposal. I certainly stood
3 behind the Franchise Tax Board proposal and thought it
4 was reasonable even though it was not fully consistent
5 with everything I would like to see.

6 MR. CHIANG: Okay. And so that I can get this
7 on the record and I have a better sense and having
8 checked with everybody, the -- you mentioned earlier in
9 your comments making a process so that it's taxpayer
10 accessible. And then -- I need to get -- understand
11 this better.

12 You then provided that we -- in regards to
13 adjudicatory matters you wanted it to be more
14 Court-like, right, which -- which means -- I need to
15 hear your perspective which is less taxpayer accessible,
16 right?

17 Everything is on the record, right? I mean, we
18 sort of have these informal things and I just need to
19 flush it out. Because when people have tax cases,
20 right, I just need to -- right, I won't necessarily meet
21 with the taxpayers, but my staff will. Right. They'll
22 meet with anybody who has an issue.

23 So, I need to get a sense from you, you know,
24 if that's the -- you know, what needs to be disclosed.
25 I'll disclose everything. I don't care.

26 MR. GOLDBERG: Well, that's -- that was one of
27 the proposals. Let's know what -- let's put everything
28 on the record. Let's make sure that in -- more

1 Court-like means that we know what documents have been
2 presented, what -- what kinds of issues are at stake.
3 Is it broader than just the factual question between the
4 taxpayer and the Board or in the several cases today
5 there were precedential questions that could cost
6 millions of dollars one way or another for the State or
7 for the taxpayer.

8 What is on the table? What is at stake? I
9 know the cases I've been involved with have been
10 important issues of nexus, but we have never been able
11 to get any -- and I'm -- I'm speaking for taxpayers who
12 were the independent book sellers -- we were never able
13 to get any information with regard to the competitive
14 disadvantage that they felt as those cases were coming
15 fully to the Board.

16 So, there's a broad question of public
17 accountable -- and I should go broader than taxpayer
18 accessible, public accountability. You are -- as the
19 Board says that we're all elected officials and we're
20 accountable to the public. There's a broad public out
21 there that needs to be able to hold elected officials
22 accountable for the decisions they made.

23 If you do not have information and decisions
24 are based on private meetings which are undisclosed
25 and -- as part of the record, then it's very difficult
26 to know what's -- what you're being held accountable for
27 and what actually transpired in a case.

28 MR. CHIANG: Yeah. No, I -- I understand your

1 perception. I -- the -- you know, and everybody's
2 different. I never commit at a meeting. Right? In
3 fact, I don't sit (inaudible) taxpayers; my staff does.
4 Right. And I have no problems disclosing what -- if
5 people want to share that. Right.

6 I just need to get a sense of view of what
7 needs to be disclosable, what -- at what point those
8 meetings should not take place. Right.

9 I have disagreements procedurally, right. I
10 think if a taxpayer has his case that's scheduled and as
11 a Chair and somebody wishes to postpone their case
12 because their representative is not available or -- you
13 know, an important witness is not available, right, like
14 the -- you know, I -- I don't think it's -- you know, I
15 still think because it's the Chair's prerogative to make
16 the schedule work.

17 MR. GOLDBERG: Sure.

18 MR. CHIANG: So -- but I need to know, you
19 know, within the parameters you're drawing whether that
20 is permissible or not permissible. You know, what your
21 public policy concerns are.

22 MR. GOLDBERG: Well, the public policy -- now,
23 I've said this a number of times, and I -- I actually
24 think that ex parte communications should be strictly
25 limited, if not prohibited, and then to do that as I've
26 been -- as I've had discussions with Board Members, one
27 of the problems is that the ten-minute period -- ten or
28 20-minute period for a case, my suggestion has been that

1 the Board meet, you know, ten -- ten days -- separate
2 out the policy and rulemaking regulatory functions of
3 the Board and the adjudicatory functions and meet for 10
4 or 12 days a month if that's what it takes to work
5 through -- work through cases in public in which
6 everything is on the record.

7 Short of that, we certainly -- and this is one
8 of the issues here -- think that the sales tax
9 record has -- needs to be broadened.

10 Ms. Mandel mentioned to me that --

11 MS. MANDEL: This -- but now you're -- now
12 you're starting to talk about a second issue.

13 MR. GOLDBERG: Okay.

14 MS. MANDEL: So, just to make it clear, in your
15 presentation, because you had the one issue which is
16 contact -- Board contact outside the context of the
17 hearing. And certainly, you know, we always strive to
18 make sure that everything is on -- on the record in
19 those appellate matters.

20 But when you -- when you start talking about
21 your issue with respect to finding out the information,
22 for example, about a sales tax case, you were talking
23 about versus income tax case and how in the past the
24 income tax matters were available and much less
25 information was available on the sales tax matters.
26 That gets into the -- and waiver and disclosure of --

27 MR. GOLDBERG: In 5033.

28 MS. MANDEL: -- information that -- of things

1 that's coming forward to hearing. So, just to make that
2 distinction.

3 MR. GOLDBERG: Right.

4 MS. MANDEL: And that's the second of one of
5 your points, right?

6 MR. GOLDBERG: I see them as a piece.

7 MS. MANDEL: Okay.

8 MR. GOLDBERG: And the reason I see them as a
9 piece is the question is how -- how accountable is the
10 adjudicatory process? In Court, everything is on the
11 record. Everything -- the -- the Judge takes it into
12 advisement. You know, it may or may not have a written
13 decision. Frequently it has a written decision on -- on
14 the case.

15 But everything is on the record. You can see
16 what -- exactly what's at stake.

17 That's not -- and -- and the combination of
18 lack of access to information and the private ex parte
19 communications that occur that are undisclosed with
20 regard to what -- what has been submitted during them,
21 what the nature of the discussion is, and that's in
22 Franchise tax cases, as well, so everything may be on
23 the record in the Franchise Tax case other than the
24 private communications.

25 It means that it is much -- one -- from the
26 outside the public can hold the Board far less
27 accountable for its adjudicatory decisions because we
28 really don't know and we can't know what's at stake,

1 what's been presented. Some -- many things that
2 happened are not on the record, including the private
3 communications that exist with the Board Members.

4 MR. CHIANG: And so, counsel, what are you
5 recommending?

6 MR. GOLDBERG: Well, I've -- I've recommended a
7 number of things. I think there -- the FTB proposal is
8 quite a reasonable one. It's not -- it doesn't go as
9 far as I would like to, but it certainly meets with the
10 concerns of FTB staff with regard to when there is a
11 meeting that the meeting is offered to be an all-party
12 meeting, so that all parties in the case are in the room
13 with the same information at the same time. That the
14 record of the communications be disclosed as a Member --
15 as a part of the public record.

16 And -- and I'm not sure if the FTB goes quite
17 far enough on this, that the nature of any information
18 that's been presented at a private meeting for -- become
19 part -- specifically become part of the record. If
20 there's going to be a full hearing record, it should be
21 exactly that, a full -- a full hearing record.

22 So, the FTB proposal would be a reasonable step
23 forward.

24 MS. MANDEL: And then on -- I'm sorry. And
25 then on your -- your --

26 MR. GOLDBERG: I should say the John Davies
27 proposal because it's not clear that it represents FTB,
28 per se.

1 MS. MANDEL: And -- and then on your question
2 of -- of access to information, was that a separate --

3 MR. GOLDBERG: That is a separate point, as is
4 the question of holding closed hearings. The -- the
5 criteria in -- annoyance, embarrassment or oppression of
6 the taxpayer. I would be embarrassed -- if I had an
7 abusive tax shelter case, I would ask for a closed
8 hearing, thank you very much, but my embarrassment
9 should not be -- my potential embarrassment should not
10 be the reason for a closed hearing.

11 And I read the language. It is fairly --
12 arguably, it's certainly not tight enough with regard to
13 closed hearings as -- as I think are the -- even the
14 trade secrets. If I were a major corporation I would
15 say all of this involves trade secrets, it should all be
16 done in closed hearings.

17 So, I think that the direction of Section 5 is
18 exactly the opposite direction. It allows for private
19 meetings, it allows for -- well, I -- I -- let me amend
20 that. On the question of sales tax, it does give the
21 hearing -- make the hearing summary public. And I have
22 to say it's not clear to me at this point to what extent
23 that hearing summary is sufficient to really expose the
24 information at stake, or whether the -- there's
25 significant background information.

26 I think anything that you go -- goes to the
27 Board should go to the public, with regard to a case.

28 MR. CHIANG: I think -- well, I

1 think certainly -- I can't speak for the future Board,
2 it's certainly been the practice of this Board.

3 MS. MANDEL: Well --

4 MR. GOLDBERG: Not with regard to sales tax
5 issues.

6 MR. CHIANG: Pardon?

7 MR. GOLDBERG: Not with regard to sales tax
8 issues.

9 MR. CHIANG: (inaudible) closed hearings.

10 MS. MANDEL: No, no. See, now -- the closed
11 hearings is one issue. Now he's talking about in these
12 rules -- yeah, he changes that a lot.

13 MR. GOLDBERG: See, I have three issues. In my
14 letter I have three issues.

15 MS. MANDEL: Right.

16 MR. CHIANG: You just have to keep a -- stay on
17 one --

18 MS. MANDEL: You got to keep -- you got to stay
19 straight -- straight on one.

20 MR. CHIANG: I'm focused on one issue.

21 MR. GOLDBERG: Okay, good. Thank you.

22 MS. MANDEL: So -- so closed hearings --

23 MR. CHIANG: For my simplification.

24 MS. MANDEL: Right. That's why I tried to
25 split them up before. Closed hearings is one. The
26 Board Member contact is another one. His third one
27 is --

28 MR. GOLDBERG: Sales tax.

1 MS. MANDEL: -- access to the information that
2 the Board has in front of it on sales tax cases because
3 traditionally the taxpayer confidentiality in a tax
4 matter where the Board administers the tax versus the
5 Franchise Tax Appeals -- Franchise Tax Appeals
6 everything was public information that got filed with
7 the Board.

8 On the sales tax case it's still the
9 confidential taxpayer matter so nothing was available,
10 as I understand it. And what the proposal is has to do
11 with hearing summaries, and at some point in that
12 interested parties process I have this recollection of
13 having asked that some kind of sanitized example of a
14 hearing summary be provided to people like Mr. Goldberg,
15 because in the discussions -- you know, people who
16 haven't handled sales tax matters or perhaps who hadn't
17 worked for a Board Member, didn't necessarily know what
18 these words meant when they were being thrown around the
19 room. What's a hearing summary? We're going to see a
20 hearing summary. Great, what's that? What else does
21 the Board have?

22 So, his third issue is if the Board Member gets
23 it for the hearing, even though it's a sales tax matter
24 where traditionally you didn't -- things were held
25 confidential, he thinks the public should get it. And
26 he's not sure whether what's in the proposal covers that
27 or not, because he's not really sure what those things
28 are. Right?

1 MR. GOLDBERG: Well -- right. It doesn't -- my
2 understanding is that it doesn't get -- the hearing
3 summary does not get sufficiently to all the information
4 that has been ostensibly put on the record when it comes
5 as a meeting here. I do understand that when you're in
6 an administrative process, and I followed -- tried to
7 follow the Barnes and Noble case very closely -- that
8 when it was in an administrative process there was no --
9 no ability to get information from -- it was a long
10 audit process. The public shouldn't be getting private
11 information there, although my clients had a very strong
12 interest in what was going on there.

13 However, when that case came to the Board --
14 when the issues came to the Board, there was still no
15 information available. And that's where that
16 information, when it comes as part of an adjudicatory or
17 appellate process needs to be presented to the public
18 and to interested parties equally.

19 And -- and the question becomes does the
20 hearing summary sufficiently cover that. In the cases
21 we heard today, do we have a sense of the full -- does
22 the public have a sense of the full implications of a --
23 of what a decision one way or the other might be?

24 MR. CHIANG: Okay.

25 ---oOo---

1 JOSHUA GOLKA

2 MR. GOLKA: Good afternoon, Mr. Chair and
3 Members of the Board. Joshua Golka with SEIU Local
4 1000.

5 We also appreciate the time and effort and
6 energy that staff put into developing these proposed
7 rules. Unfortunately, and we must agree with the -- the
8 statements made by -- not unfortunately, I guess isn't
9 the way to do it -- we would align ourselves with the
10 comments made by Mr. Goldberg. Rather than repeat all
11 of them we'll just stand on those.

12 We did withdraw our alternative which is listed
13 as Alternative 3. But that did not indicate an
14 intention on our part to acquiesce to -- to the rules as
15 you see them here. We -- our understanding was that
16 there would be a further dialogue on the issues. And we
17 hope that that will take place. So, we're asking you
18 today to reject the request today so that we can have a
19 further discussion on the issues that Mr. Goldberg
20 raised.

21 Thank you.

22 MR. CHIANG: Okay.

23 MR. EVANS: We have one more speaker. Mary
24 Hernandez.

25 ---oOo---

1 MARYHERNANDEZ

2 MS. HERNANDEZ: Good afternoon. Mary
3 Hernandez. California State Council for Service
4 Employees. I'd also like to reiterate the points made
5 by Mr. Goldberg. We think that this proposal ought to
6 be rejected pending further discussions on the matters.

7 MR. CHIANG: Thank you.

8 Okay, questions or comments?

9 MS. YEE: Mr. Chairman.

10 MR. CHIANG: Yes.

11 MR. LEONARD: Mr. Chairman.

12 MR. CHIANG: Betty, then Bill.

13 MS. YEE: I have a couple of concerns here.
14 One, relative to the process and how the proposed rules
15 in this current form before us got to this state
16 without, I guess, some more dialogue with the parties
17 that have been involved in the process.

18 So I -- I do want to pose that question to the
19 staff. But, secondly, another question to the staff,
20 and that is with all the alternatives that had been put
21 forth, had there been any kind of analysis on them that
22 brought you to the conclusion that is now embodied in
23 the rules as we see them today?

24 MR. LAMBERT: You're speaking with respect to
25 which of the three issues we've been talking about?

26 MS. YEE: Actually, I'm speaking more generally
27 to the entire process, because there were suggestions
28 brought forth. I think some of them were less

1 controversial in the earlier parts of the -- of the
2 rules, but certainly with respect to parts 4 and 5.

3 MR. LAMBERT: We've continually been having
4 discussions and communication and analyses. It's -- I
5 don't think it's the case that the staff ever has and
6 does not now necessarily take all, you know, alternative
7 proposals or language they hear in an interested parties
8 meeting and present it to the Board at a hearing.

9 For instance, if the staff feels that there's
10 not a sufficient quantum of support among the interested
11 parties for a certain proposal, if they feel that the
12 alternative language is unworkable or prohibitively
13 expensive or just unrealistic, or if they think that the
14 alternative proposal is unsupported by law and there's
15 no really legal basis for it --

16 MS. YEE: I guess --

17 MS. MANDEL: I'm -- I'm sort of -- I guess I'm
18 a little perturbed by that, because the interested
19 parties process as set up -- certainly the way it's run
20 through the -- the committees that have handbooks on how
21 to handle things, typically it may be the case that in
22 the course of those discussions somebody is brought to
23 an understanding that what they are -- what they think
24 ought to be proposed fails a whole host of things and
25 then the person winds up saying, oh, yeah, you know, I
26 am not going to take that issue to the Board, I'm not
27 going to push that issue, but that the -- that as a
28 general way of dealing with interested parties that

1 we've had through the committees, a full package goes
2 and people are asked whether they have -- there is an
3 issue or something that they want to take to the Board
4 and what's their alternative language so it can be --
5 be presented.

6 And it -- and it -- you know, it may be, you
7 know, you have some outlier who says, "I still want to
8 do," you know, whatever. And for the most part on the
9 substantive types of issues that we've had, there's
10 been, you know, for lack of a better word, sort of a
11 taxpayer side and perhaps an assessor side on property
12 tax and -- and they try to be, you know, coherent on
13 their one side.

14 But as we saw this morning, we had, you know,
15 four different sets of language that came out of an
16 interested parties process.

17 So, I -- I'm not sure that that's, you know,
18 totally accurate that we go through an interested
19 parties process and then staff just doesn't present
20 proposals if staff feels that it doesn't meet certain
21 criteria.

22 MR. LAMBERT: Of course this was a pretty
23 massive project and there were a lot of interested
24 parties meetings. I think with respect to the three
25 outliers, if that's the word, with respect to the
26 constituent communication issue, I think staff believed
27 that the union essentially had withdrawn their
28 objection. Rightly or wrongly, I think staff believed

1 that.

2 MS. MANDEL: Well, and he -- he says they had
3 withdrawn that --

4 MR. LAMBERT: Right.

5 MS. MANDEL: -- language.

6 MR. LAMBERT: Right. I think we had -- I think
7 there were discussions at an interested parties meeting
8 with Mr. Goldberg where he had expressed some of the
9 thoughts he expressed today, but we never received an
10 alternative proposal from him until this week.

11 With respect to the Chief Counsel at the FTB, I
12 think that we found that -- that proposal lacking in
13 some respects and we thought -- thought it was
14 unworkable and not really supported by law.

15 Specifically, it was -- it was citing a -- an
16 old rule of professional conduct that had been
17 superseded to make it clear that the Board Officers --
18 Board Members are not judicial Officers. So, we found
19 that lacking legally.

20 I think those were among the reasons the staff
21 chose not to bring that to the Board, although they did
22 put it on the web site and they did send it to -- you
23 know, put it in their matrix and they did provide it to
24 the Board Members.

25 MS. YEE: I guess the step that's missing that
26 seems to be creating a lot of problems is what happened
27 between the time that the alternatives were proposed and
28 the conclusion that you all came to that's embodied in

1 the rules today before us.

2 And I know our office short of asking the
3 specific questions, we didn't really see kind of a
4 detail of the analysis that went into the conclusion
5 that you all drew. And I think that's what's been
6 problematic, is that there's not been a discussion nor
7 anything that's tracked how we got to the proposals as
8 we see them today.

9 MR. LAMBERT: I see.

10 MR. GOLDBERG: If I may, on process, I had
11 assumed that by speaking at an interested parties
12 meeting those ideas became part of the record in some
13 form or another. And I apologize for not having written
14 up full-blown proposals.

15 MR. CHIANG: Betty, were you still --

16 MS. YEE: I'm trying to figure out how to
17 resolve this gap. The -- I think my suggestion would be
18 to figure out what public forum we can institute to at
19 least get current on the dialogue about what happened to
20 each of the --

21 MR. LAMBERT: Can I add a point of
22 clarification?

23 MS. YEE: Yes.

24 MR. LAMBERT: We -- our staff did communicate
25 with the FTB, with the Chief Counsel and with the union
26 with respect to their -- their issues.

27 MS. YEE: No, I understand that.

28 MR. LAMBERT: We did discuss that with them.

1 MS. YEE: No, no, and I appreciate that, that
2 you went back to the originating parties.

3 MR. LAMBERT: Right.

4 MS. YEE: But in terms of the entire process
5 and all the participants in the process, I think there
6 are some who are kind of in the dark about what's
7 happened.

8 And it -- but I think it deserves that kind of
9 airing and public process. It could be an interested
10 parties process. It could be a special order on the
11 next Board meeting agenda. But I think there are a lot
12 of gaps and I'm not sure that -- I mean, I'm not
13 prepared to vote on these today.

14 MR. CHIANG: Do you have a recommendation?

15 MR. LAMBERT: Might -- might I add if we are
16 going that direction, may I just take one second and
17 inject something?

18 I believe we are down to one paragraph that's
19 not -- well, there's possibly more given the disclosure
20 rule -- issue. But if we're talking about the
21 constituent communication matter, that's one paragraph
22 that's uncross-referenced. You could theoretically
23 adopt the rest of Chapter 5.

24 MR. PARRISH: Which is -- yes.

25 MR. LAMBERT: Pull that paragraph and deal with
26 that later if that's going to be more time consuming.

27 MS. MANDEL: Well, I -- you know, I'm not
28 prepared to do that today, either, because I haven't

1 seen the final-final with all the changes in it and I
2 know there were changes coming even this week. And if
3 we're going to move into formal rulemaking we should
4 certainly have the best drafted product that we can
5 have.

6 MS. YEE: I also don't sense kind of why the
7 urgency. I mean, I think I really would like to be sure
8 that we're --

9 MR. LAMBERT: Fair enough.

10 MS. YEE: -- getting it back out to a public
11 dialogue --

12 MR. LAMBERT: Fair enough.

13 MS. YEE: -- with respect to how we got here
14 and be sure that people understand what it is that's
15 before us.

16 MR. PARRISH: Mr. Chairman.

17 MR. CHIANG: Yes, Mr. Parrish.

18 MR. PARRISH: Okay. There's been I don't know
19 how many months of hard work by the staff. There are
20 items 1 through 5. We do -- I would -- I would hope
21 that before I leave and -- that we would be able to
22 resolve or at least approve the good work that's been
23 done.

24 Now, with respect to item 5, I think today we
25 could approve item 1 through 4. But what has been
26 talked about and what some of the speakers talk about is
27 they don't think that the elected representatives of the
28 Board should be able to talk to their constituents.

1 Now, this has been through -- several bills in
2 the Legislature attempted to do just that. But the
3 Legislature in their wisdom decided that we do have the
4 right to speak to our constituents, and those bills by
5 the several authors all failed. And than there's no way
6 to satisfy some of the people -- or one individual
7 speaking, they'll never be satisfied, and they will --
8 they will continue with delaying tactics unending that
9 will prohibit these -- these -- this fine work to be
10 implemented based been the fact that they -- now, I'm
11 not putting any words in their mouth because it's on the
12 record. They think that this Board should be operated
13 as a Court of law.

14 This is not a Court of law. This is an
15 administrative procedure. We are not Judges. The
16 Legislature looked very carefully at the bills that
17 would eliminate our contacting our constituents and the
18 bottom line is if you want a Court of law you have to
19 pay to play. That's the way it is. And the Legislature
20 decided that, yes, if you want Court proceedings and you
21 want the judicial -- whole judicial ball of wax, then
22 the taxpayer has -- has that right. And then, when --
23 but they must pay the tax first.

24 What you're advocating here is the taxpayers
25 don't have to pay, but they get a Court. And that is
26 not anything that the Legislature will ever accept.

27 So, with that having been said, I do make a
28 motion, Mr. Chairman, to approve the -- the Rules of

1 Practice that have been worked on, and everybody had
2 months and months and months and months to put their two
3 cents in, and nobody was held out and nobody was held to
4 three minutes, and they certainly weren't held to three
5 minutes today, and they certainly are able to contact
6 the Board Members, and I think that enough is enough and
7 we ought to end this endless debate and -- you know, the
8 new legislative session is coming up again. And maybe
9 the Legislature will decide that we want taxpayers to go
10 before a Court of law but without having to pay the tax.
11 But I doubt it, seriously.

12 So I make a motion that we accept the -- go
13 forward with the new Rules of Practice.

14 MR. CHIANG: Okay, very good. We have a motion
15 by -- by Mr. Parrish.

16 Is there a second?

17 MR. LEONARD: Second.

18 MR. CHIANG: There's a second.

19 Please take roll.

20 MR. LEONARD: Can I ask a question?

21 MR. CHIANG: Certainly.

22 MR. LEONARD: This is a motion -- the staff
23 recommendation and the motion is to publish. And it's
24 how many days? What's the notice period on the --

25 MS. RUWART: 45 days.

26 MR. LEONARD: 45 days. And then we're required
27 to have a public hearing --

28 MS. RUWART: Correct.

1 MR. LEONARD: -- after the end of 45 days.

2 My support for the motion is actually to
3 further Mr. Goldberg's point. I'm concerned that
4 there's a chance there's only insiders on this process,
5 and that by publishing we'll get a better and a greater
6 circulation of all five chapters that may bring out a
7 whole host of new issues because, frankly, it's -- it's
8 the real interested parties who have been at these
9 meetings and have talked these things through and
10 through, but not necessarily everybody in the State.

11 So, I think it's important that we move on at
12 some point, and I'd urge today, to the next step to get
13 a wider circulation of all five chapters and -- and
14 then -- because as I understand it, we're free to amend
15 the proposal at the next public hearing. It may require
16 republication or not, but we're free to amend it.

17 So, we're -- we're not barred by accepting new
18 ideas, discussing them. I think there's been a healthy
19 debate today and -- and because such a large volume, as
20 Mr. Parrish points out, of all five chapters appears to
21 be consensus, I'd like to run that test by a much
22 greater circulation and would move to publish.

23 Second Mr. Parrish's motion.

24 MR. CHIANG: Thank you. Please take roll.

25 MR. EVANS: Mr. Leonard.

26 MR. LEONARD: Aye.

27 MR. EVANS: Mr. Parrish.

28 MR. PARRISH: Aye.

1 MR. EVANS: Ms. Mandel.

2 MS. MANDEL: No.

3 MR. EVANS: Ms. Yee.

4 MS. YEE: No.

5 MR. EVANS: Mr. Chiang.

6 MR. CHIANG: No. Motion fails.

7 Is there another motion?

8 MS. YEE: I'll move to -- actually, what I'd
9 like to have staff do is maybe have one more interested
10 parties meeting to try to fill that gap between what
11 happened with the alternatives having been withdrawn and
12 the proposals that we see here today.

13 So, if we could have that and maybe have the
14 rules and -- and then also give the opportunity for any
15 Board Members that continue to have concerns -- I know I
16 still have a couple of concerns -- after seeing the
17 language, to submit those, too, and have the matter
18 agendized back, what -- for the November meeting?

19 MR. CHIANG: Okay. We have a motion by Yee.

20 Is there a second?

21 MS. MANDEL: Yeah.

22 MR. CHIANG: Is there a second?

23 MS. MANDEL: Yeah, I'll second that.

24 MR. CHIANG: There's a second. Please take
25 roll.

26 MR. EVANS: Mr. Leonard.

27 MR. LEONARD: No.

28 MR. EVANS: Mr. Parrish.

1 MR. PARRISH: No.

2 MR. EVANS: Ms. Mandel.

3 MS. MANDEL: Aye.

4 MR. EVANS: Ms. Yee.

5 MS. YEE: Aye.

6 MR. EVANS: Mr. Chiang.

7 MR. CHIANG: Aye. Motion passes.

8 Yeah, Brad.

9 MR. HELLER: Mr. Chair, just one clarification.

10 As we move forward through the process, do we have
11 direction to go ahead and continue -- or to reinclude
12 those alternatives for that one section dealing with
13 communications so that when we come back to the Board in
14 November that they should be included regardless of what
15 happens, or that we should --

16 MS. YEE: I think the interested parties
17 discussion will guide you. I mean, part of -- we
18 haven't had the conversation with everyone involved.

19 MR. CHIANG: You guys have done a great job.

20 MS. YEE: Yeah.

21 MR. CHIANG: We trust you. Just do what you
22 think best.

23 MS. YEE: Yeah.

24 MS. MANDEL: Yeah, and if somebody -- you know,
25 it's just, you know, run -- run it the sort of regular
26 straight way we run it and we'll get to a right place.

27 MR. LAMBERT: Aye-aye.

28 MR. CHIANG: Thank you.

1 MS. YEE: Thank you to the staff.

2 MR. CHIANG: Next item, please.

3 ---oOo---

REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on September 27, 2006 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding 37 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: October 3, 2006.

BEVERLY D. TOMS
Hearing Reporter